

Appeal from decision holding that oil and gas lease Great Falls 076124 had terminated by cessation of production.

Reversed and remanded.

1. Oil and Gas Leases: Extensions

Where an oil and gas lease in its extended term because of production has ceased production for a known period and the Geological Survey questions whether the lease is currently capable of production, the lease will not terminate by operation of law if the lessee can show that any of three sets of conditions or circumstances exist: (1) reworking or drilling operations were begun on the lease within 60 days after cessation of production; (2) operations or production had been suspended by order or with the consent of the Secretary; and (3) the lessee can make an acceptable showing within 60 days after notice from the Survey that there is a well in a producing status on the leasehold.

APPEARANCES: Kye Trout, Jr., for appellant. 1/

OPINION BY ADMINISTRATIVE JUDGE RITVO

Kye Trout, Jr., has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated November 11,

1/ Kye Trout, Jr., has filed a notice of appeal and a statement of reasons in this case on his own behalf. He refers to himself as an "Operator-Agent." He makes no reference to any representation on behalf of the lessee, Mrs. Emily H. Oien, nor is there any official recognition in the record as to his exact capacity in this matter. By letter of November 11, 1972, Mrs. Oien informed the District Engineer, Geological Survey, that she had sold her leases to Mr. Kye Trout. There is no evidence of record of an assignment of this lease to Mr. Trout approved by the BLM. However, he has apparently been served copies of pertinent correspondence in his capacity as operator of the lease.

1975, which held that exchange lease Great Falls 076124 had terminated effective as of midnight, December 31, 1973, when paying production ceased.

Emily H. Oien had been recognized by the BLM as the sole record lessee for this producing lease as of April 30, 1973. The lease had originally been issued effective May 19, 1945, under section 2(a) of the Amendatory Leasing Act of August 21, 1935 (49 Stat. 674), for a 10-year term, and for so long thereafter as oil or gas is produced in paying quantities. The record shows that producing wells were in operation on the lease at the end of its initial term, and the lease thereafter remained in its extended term because of production. The lease had not been committed to either a Communitization Agreement or a Unit Agreement.

On June 24, 1975, the Geological Survey's Acting District Engineer notified both the lessee and the apparent operator, Mr. Kye Trout, Jr., that the Survey was aware the wells on the lease were shut-in during January 1974 through March 1975. The notice specifically stated that:

* * * * *

Since this lease is in its extended term by production, it must contain a well capable of producing hydrocarbons in paying quantities, i.e. sufficient quantities to pay the day-to-day operating and lease maintenance costs, or it will be considered to have expired.

In the absence of an acceptable showing by you that any of the subject wells are capable of producing leasehold substances in paying quantities,

within sixty (60) days from the receipt of this notice, this office will consider the lease to have terminated by operation of law effective December 31, 1973.

* * * * *

The foregoing information is furnished so that you may take such action as you consider appropriate. You are further reminded that no production tests or other operations should be conducted on the lease without prior approval by this office.

* * * * *

On July 15, 1975, Mr. Trout responded to the Acting District Engineer of the Geological Survey advising that he contemplated extensive reworking and revamping during August through November of 1975. He stated:

We believe that a number of the wells, when reworked and made more efficient, will be capable of producing hydrocarbons in paying quantities. During the sixty day period noticed in your letter we would like to perform some production tests of the wells capable of production on the lease as we have done in the past and now seek your approval to conduct these tests and there-after to engage in the reworking and revamping program.

There is no copy of this correspondence contained in the BLM file, nor is there any indication that the Survey acknowledged this request.

On November 4, 1975, the Acting Oil and Gas Supervisor, Northern Rocky Mountain Area, Geological Survey, reported to the BLM Montana State Director that the District Engineer had inspected the wells and made a determination as of June 24, 1975, that the lease was incapable of producing in paying quantities. He further advised that no approved operations to restore such paying production on the lease were commenced within the 60 days thereafter as allowed under 43 CFR 3107.3-1. The BLM subsequently issued its decision declaring the lease had terminated as of December 31, 1973.

Appellant asks that the lease be continued and reinstated contending that the Geological Survey's notice of June 24, 1975, required prior approval for production tests or other operations. He contends that his letter of July 15, 1975, supra, requested prior approval to conduct production tests during the 60-day period and to thereafter engage in a reworking and revamping program, but he never received a response to this request. He asserts the lease is capable of production in paying quantities and that the reworking and revamping will enable operation of the lease on a year-round basis.

[1] The pertinent provisions of the Mineral Leasing Act of 1920, as amended, governing the termination of leases on which production ceases are set forth in 30 U.S.C. § 226(f) as follows:

Termination

(f) No lease issued under this section which is subject to termination because of cessation of production shall be terminated for this cause so long as reworking or drilling operations which were commenced on the land prior to or within sixty days after cessation of production are conducted thereon with reasonable diligence, or so long as oil or gas is produced in paying quantities as a result of such operations. No lease issued under this section shall expire because operations or production is suspended under any order, or with the consent, of the Secretary. No lease issued under this section covering lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same unless the lessee is allowed a reasonable time, which shall be not less than sixty days after notice by registered or certified mail, within which to place such well in producing status or unless, after such status is established, production is discontinued on the leased premises without permission granted by the Secretary under the provisions of this chapter.

This section recognizes three distinct and separate sets of conditions or circumstances in which a lease will not expire even though production has ceased and the lease is in an extended term by reason of production. Steelco Drilling Corporation, 64 I.D. 214, 217 (1957).

Appellant has not yet demonstrated that the circumstances of this lease qualify for an exemption from expiration under any of these three situations.

In the first instance a lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction. 43 CFR 3107.3-1.

The Geological Survey found that this lease was shut-in for a period from January 1974 through March of 1975. Appellant has never disputed the inactivity on the lease or these dates of nonproduction cited by the Survey. Further, he has admitted that no activity was carried out within the critical 60-day period after the shutdown of the wells. When he acknowledged the Survey's June 24, 1975, notice he indicated that he contemplated future extensive reworking and revamping during a period from August to November 1975. It is clear that no such operations had previously been conducted within 60 days of termination as required by 43 CFR 3107.3-1. The State Office rested its decision on appellant's failure to comply with this proviso.

The second exemption provision prevents termination of a producing lease where operations or production are suspended by order or with the consent of the Secretary. This provision is inapplicable since there has been no suspension mentioned in this case.

The third and final exemption from termination is applicable only to leases on which there is a well capable of producing oil or gas in paying quantities. E. O. McGlothlin, A-30392 (September 15, 1965); Steelco Drilling Corporation, supra at 219. It is evident from the facts of record that, as of the date of the Survey notice, this determination remained unknown. The appellant was issued a notice to show within 60 days that as of December 31, 1973, there was on the lease a well capable of producing oil and gas in paying quantities and to place the well on producing status as allowed by 43 CFR 3107.3-2 which states:

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same unless the lessee fails to place the well on a producing status within 60 days after receipt of notice by registered mail from the Regional Oil and Gas Supervisor to do so: Provided, that after such status is established production shall continue on the leased premises unless and until suspension of production is allowed by the Secretary of the Interior under the provisions of the act.

As we have seen, the appellant has stated, albeit somewhat ambiguously, both in his letter of July 15, 1975, and his appeal that the lease has wells capable of production. Apparently no response was made to his request for permission to conduct production tests to prove his assertion. While he may be subject to criticism for not pursuing his request, the Geological Survey in turn, neither approved nor denied it. Thus he has so far been denied an opportunity to make the showing. In the circumstances, we deem it best that the appellant be given another 60-day opportunity to demonstrate that the lease did contain a well capable of producing oil or gas in paying quantities as of December 31, 1973. If approval is denied, the appellant should be so informed and given specific reasons for the denial. Otherwise, when appellant submits his showing within the time allowed, another determination will be made as to whether the lease was extended. If he makes no showing at all, his lease will be held to have terminated as of December 31, 1973.

We caution that appellant is not entitled to a 60-day period to make further tests to ascertain whether he now has a well on the lease which could be made capable of production, but only to show that he had one on December 31, 1973. If he could not resume production at that time the lease did not come within the purview of 43 CFR 3107.3-2 and the lease had terminated. Steelco Drilling, supra at 220.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded for further proceedings consistent herewith.

Martin Ritvo

Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

